SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1926.

No. 398.

ROBERT L. CULPEPPER, PETITIONER,

vs.

JAMES M. COHEN, FREE.

PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

PETITION FOR CERTIORARI FILED MARCH 31, 1926.

CERTIORARI AND RETURN FILED JUNE 14, 1926.

(27,357)

(27,587)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 292.

ROBERT L. CULPEPPER, PETITIONER,

vs.

JAMES M. OCHELTREE.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 10, 1920.

a In the Supreme Court of the State of California.

L. A. No. 4962.

ROBERT L. CULPEPPER, Plaintiff and Appellant,

vs.

JAMES M. OCHELTREE, Defendant and Respondent.

From the Superior Court of Riverside County.

Hon. Hugh H. Craig, Judge.

Transcript on Appeal.

Henry M. Willis, San Bernardino, California, J. O. Phillips, Blythe, California, Attorneys for Plaintiff and Appellant.
Duke Stone, Los Angeles, California, Attorney for Defendant and Respondent.

Filed Oct. 4, 1916. B. Grant Taylor, Clerk, by Erb, Deputy Clerk.

1 In the Superior Court of the State of California in and for the County of Riverside.

ROBERT L. CULPEPPER, Plaintiff,

vs.

JAMES M. OCHELTREE, Defendant.

Complaint.

Comes now the plaintiff in the above entitled action, and complaining of the defendant herein alleges:

I.

That the said plaintiff is, and at all times mentioned herein, has been a citizen of the United States, over the age of twenty-one years, and is now, and has been at all times mentioned herein,
2 qualified under the laws of the United States, to make and perfect a homestead entry upon public lands of the United States, under the land laws of the United States.

II.

That on February 10th, 1903, and for a long time prior thereto, the S. W. ¼ of Sec. 12, T. 7 S., R. 22 E., S. B. M., situated in the County of Riverside, State of California, was, among other lands in the same neighborhood, open to entry under the lands laws of the United States.

III.

That on February 10th, 1903, one Danforth Arnold, duly made his homestead entry in the United States Land Office, at Los Angeles, California, on said S. W. ¼ of said Sec. 12, under the homestead laws of the United States: said Land Office then and at all times hereinafter mentioned, being the United States Land Office, having jurisdiction over said lands as provided by law.

IV.

That on or about the 8th day of September, 1903, the said lands, together with other lands in the neighborhood thereof, were duly withdrawn by order of the Land Department of the United States, under and by virtue of an act of Congress approved June 17th, 1902, and known as, and called the "Reclamation Act," from all
3 forms of entry, said withdrawal being what it commonly known as and called, and designated by the Land Department of the United States as, a "First Form Withdrawal;" and that said lands remained so withdrawn under said "First Form Withdrawal," until restored as hereinafter mentioned. That lands so withdrawn under said "First Form Withdrawal" under said act of June 17th, 1902, cannot, under the terms and provisions of said Act, be entered, selected or located in any manner as long as the said lands so remain withdrawn.

V.

That on January 30th, 1908, and while said lands were so withdrawn, one James M. Ocheltree, defendant herein, filed a contest against the said homestead entry of the said Danforth Arnold, on the said lands hereinbefore described, under and by virtue of the laws of the United States and the rules and regulations of the Land Department and subject to the act of Congress of May 14th, 1880, which said contest was recognized by the Land Department of the United States; that the Register and Receiver of the Local Land Office of the United States, at Los Angeles, California, entertained said contest and sustained the same in favor of said defendant, and made its report in due form to the Commissioner of the General Land Office, recommending a cancellation of said entry, that on

September 30, 1908, the then Commissioner of the General
4 Land Office sustained the decision of the Register and Receiver of the said Local Land Office, and cancelled the said homestead entry of the said Danforth Arnold, and directed the said Register and Receiver to advise all parties in interest; that thereafter to-wit, on January 13, 1909, the Register and Receiver of the Local Land Office at Los Angeles, California, duly notified said defendant, James M. Ocheltree, of the cancellation of said entry: and at the same time notified him that he had been awarded a preference right to enter upon the said S. W. ¼ of Sec. 12, T. 7 S., R. 22 E., S. B. M., within thirty days after the said land had been restored to public entry.

VI.

That, thereafter, to-wit, by an order duly made by the Secretary of the Interior of the United States, to-wit, on January 10th, 1910, said lands together with other lands in the neighborhood thereof, were restored to public settlement on April 18, 1910, and to public entry on May 18, 1910.

VII.

That on April 18, 1910, plaintiff herein, being then and there duly qualified under the land laws of the United States to make settlement and to make a homestead entry on open public lands of the United States, made actual settlement on the said S. W. ¼ of Sec.
12, T. 7 S., R. 22 E., S. B. M. in Riverside County, California,
5 said lands being a part of the lands so restored as hereinbefore alleged, with the intention of claiming the same under the homestead laws of the United States; that plaintiff thereby acquired a settler's right under and by virtue of the Act of Congress of May 14, 1880, relating to a settler's right; that he remained thereon as such settler and made his residence thereon, under and by virtue of the laws of the United States, and on May 18, 1910, duly made entry thereon, by filing his homestead application, as such settler, in the United States Land Office, at Los Angeles, California, and paying the fees required by law, and in all respects complied with the laws and rules and regulations of the Land Department, relating to homestead entries, and continued to reside thereon with his family, and make improvements thereon, until dispossessed by said defendant, by a judgment duly made and given in the Superior Court of the State of California, in and for Riverside County, and entered October 14, 1915.

VIII.

That on May 18, 1910, but subsequent to the entry of plaintiff, said defendant James M. Ocheltree made his homestead entry on the same land in the United States Land Office at Los Angeles, California, claiming a preference right so to do, under and by virtue of said alleged preference right theretofore awarded him by the

Register and Receiver of the Local Land Office of the United States,
at Los Angeles, upon the successful termination of said con-
6 test against the entry of said Danforth Arnold.

IX.

That on May 18, 1910, all of said applications to enter and all said entries, were duly suspended by the Land Department of the United States, pending the settlement of a contest between the State of California and the United States of America, as to the character and disposition of said land; that on May 22, 1912, by an order duly made and entered said lands were again restored to public entry, subject to the entries already made thereon.

X.

That thereupon, on May 24, 1912, without hearing and without evidence, and arbitrarily, the Register and Receiver of the Land Office, at Los Angeles, California, rejected and cancelled the homestead entry of plaintiff, and allowed the homestead entry of defendant, on the sole ground that the said defendant had acquired a preference right under the laws of the United States, by reason of the successful termination of the contest theretofore filed and concluded by him as hereinbefore alleged.

XI.

That thereafter plaintiff adopted, used and exhausted all remedies
provided by the laws of the United States, and the rules and
7 regulations of the Land Department of the United States, concerning appeals, and the exercise of supervisory authority, in order to secure his said right as a settler, and as a homestead entryman on said lands, under and by virtue of said settlement and homestead application, but that the officers of the Land Department of the United States refused, and still refuse, to allow him the right he acquired under and by virtue of his settlement on said lands as hereinbefore alleged, and his entry thereon under the homestead laws of the United States hereinbefore alleged; that plaintiff was, at the time of said application, and ever since has been, and still is, duly qualified to make and perfect the right vested in him thereby granted by law; that by reason of, and through the action and decisions of the Officers of the Land Department of the United States, the said entry of plaintiff has been cancelled and denied, and the said entry of the said defendant has been allowed and approved, and patent was, on February 4, 1915, issued by the President of the United States to the said James M. Ocheltree for the said lands, which said patent was recorded in the office of the County Recorder of Riverside County on May 23, 1915, in Book 6 of Patents at page 368, all as a result of the said action and decisions of the Officers of the Land Department of the United States, and not otherwise.

8 XII.

And plaintiff further alleges that he is informed and believes, and upon such information and belief alleges, that the Officers of the Land Department of the United States, to-wit, the then Register and Receiver of the Local Land Office, at Los Angeles, California, who received, recognized and entertained the contest of the said defendant, James M. Ocheltree against the former homestead entry of the said Danforth Arnold, as aforesaid, and who, after hearing said contest recommended to the Commissioner of the General Land Office, that the said entry be cancelled; and that the then Commissioner of the General Land Office who considered said contest, and the recommendation of the Register and Receiver, aforesaid, and cancelled said entry of Danforth Arnold, as aforesaid, and directed said Register and Receiver of said Local United States Land Office, at Los Angeles, California, to advise all parties in interest in said contest, acted wrongfully and contrary to the law, by and through a misconstruction and mistake in the application of the laws of the United States, relative to the acquiring of a preference right by reason of such contest, particularly contrary to the express terms of the Act of Congress of May 14, 1880, wherein and whereby a preference right is declared and created under and by virtue of and subject to the terms of said Act.

9 XIII.

That the said then Register and Receiver of the Local United States Land Office at Los Angeles, California, acted beyond their jurisdiction, and contrary to law, in arbitrarily, and without notice of hearing or trial, cancelling the homestead application of plaintiff herein, as hereinbefore described and set forth, due to a misconstruction and misapplication and misconception of the law relating to the rights vested in this plaintiff by reason of his settlement on the lands described in said application, as hereinbefore alleged, and due to a misapplication and misconstruction and misconception of the law of the United States, relating to the preference right created and designated in said Act of Congress on May 14, 1880, that for the same reason, the then Commissioner of the General Land Office and the then Secretary of the Interior of the United States, in considering and approving and affirming the action and decision of the said Register and Receiver, and of each other, misapplied, misconstrued and misconceived the laws of the United States, relating to the right acquired by said plaintiff in making his settlement and entry as aforesaid; and misapplied, misconstrued and misconceived the purpose of the Laws of the United States in denying the same, and cancelling the same, by virtue of the alleged preference right of the said defendant, awarded him as aforesaid by said officers of the General Land Office, as a result of the successful termination of said contest against the homestead entry of the said Danforth Arnold as aforesaid.

10 XIV.

That the Register and Receiver of the Local Land Office at Los Angeles, and the Commissioner of the General Land Office, and the Secretary of the Interior, in deciding against the right, claimed by said plaintiff, under and by virtue of his settlement and homestead entry, as hereinbefore alleged, and in favor of the said defendant James M. Ocheltree, by virtue of the alleged preference right awarded him, and recognized by the officers of the General Land Office of the United States, acted contrary to law, under and by reason of a misapprehension, a misconstruction, a misconception, and a disregard of the law of the United States, relating to contests and homestead entries, and settlers' rights, and preference rights.

XV.

That all of the Officers of the Land Department as hereinbefore described, in denying plaintiff's right as a settler on the lands hereinbefore described, and the right acquired by him under the land laws of the United States, by reason of said settlement on April 18, 1910, and the filing of his application for homestead on May 18, 1910, and in granting the subsequent application to homestead made by the said defendant, James M. Ocheltree, on the ground that he had theretofore acquired a preference right under the laws of the United States, by virtue of the successful termination
11 of his contest of the prior homestead entry of said Danforth Arnold, was without the jurisdiction of the said Officers of the said Land Department, and was contrary to law, due to a misconstruction, misapplication and misconception of the law on the subject.

XVI.

That by reason of such misconstruction, misapplication and misconception of said laws as aforesaid, this plaintiff has been deprived of, and prevented from attaining title to the said lands embraced within his said homestead application, and that the defendant, James M. Ocheltree, has been granted the title to the same by a patent from the President of the United States, upon the action and decision of the said Officers of the Land Department as aforesaid, and not otherwise.

XVII.

That during all the times herein mentioned, and since April 18, 1910, the plaintiff has been ready, able and willing and qualified, under the laws of the United States, to make and complete and perfect the homestead entry made by him as aforesaid and that he had in fact complied with all the laws and requirements of the laws of the United States, and all the rules and regulations of the Land Department of the United States, relating to home-

steads, except as prevented or prohibited by the Officers of said Land Department, until he was ejected from said premises
12 by judgment of the Superior Court of the State of California in and for the County of Riverside, entered October 14, 1915, as hereinbefore alleged.

Wherefore, plaintiff prays that a decree be entered herein declaring that the defendant holds the title to the lands hereinbefore described in trust for this plaintiff, and that the defendant be required to make a good and sufficient conveyance of said lands, and the title thereto to this plaintiff; and for the reasonable value of the use of said premises since October 14, 1915, and for costs of this action, and for such other and further relief that may, to the Court, seem meet and equitable.

HENRY M. WILLIS AND
J. O. PHILLIPS,
Attorneys for Plaintiff.

STATE OF CALIFORNIA,
County of San Bernardino, ss:

Henry M. Willis being first duly sworn, says that he is attorney for the plaintiff in the above entitled action; and has his office in San Bernardino, in the County of San Bernardino; that plaintiff is absent from the County of San Bernardino, and for that reason his attorney makes this verification; that he has read the foregoing Complaint and knows the contents thereof; that the
13 same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and that as to those matters he believes it to be true.

(Signed) HENRY M. WILLIS.

Subscribed and sworn to before me this 24th day of December, 1915.

[Notarial Seal.] FRED A. WILSON,
Notary Public in and for the County of San Bernardino, State of California.

Endorsed: Filed Dec. 27, 1915. A. B. Pilch, Clerk, By O. A. Lowentrout, Deputy.

(Title of Court and Cause.)

Original Summons.

The People of the State of California Send Greetings to James M. Ocheltree, defendant:

You are hereby directed to appear and answer the complaint in an action entitled as above, brought against you in the Superior Court of the County of Riverside, State of California, within ten

days after the service on you of this summons, if served within this county; or within thirty days if served elsewhere.

14 And you are hereby notified unless you appear and answer as above required, the said plaintiff will take judgment for any money or damages demanded in the complaint as arising upon contract, or he will apply to the Court for any other relief demanded in the complaint.

Given under my hand and seal of the Superior Court of the County of Riverside, State of California, this 27th day of Dec., A. D. 1915.

[SEAL.]

A. B. PILCH,
Clerk,
By O. A. LOWENTROUT.

Endorsed: Filed Apr. 25, 1916. A. B. Pilch, Clerk, by O. A. Lowentrout, Deputy.

(Title of Court and Cause.)

Demurrer of Defendant

Comes now the defendant, James M. Ocheltree, in the above entitled action and demurs to plaintiff's complaint therein, upon the following grounds:

That said complaint does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against this defendant.

15 Wherefore, defendant prays the judgment of the Court sustaining this demurrer.

DUKE STONE,
Attorney for Defendant.

(Title of Court and Cause.)

Affidavit.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Dune Stone, of lawful age, being first duly sworn, deposes and says: that he is attorney for the defendant in the above entitled action, and his office as such attorney is located in Los Angeles County, California; that Henry M. Willis, Esq., is the attorney for the plaintiff, and both resides and has his office in San Bernardino, California; that there is a regular system of communication by United States mails between the City of Los Angeles and said City of San Bernardino; that on May 1st, 1916, affiant mailed to said Henry M. Willis, Esq., at his said address, a true copy of the within and attached demurrer by then and there placing said copy of said demurrer in an envelope addressed to said Henry M. Willis at said City of San Bernardino, California, and sealing said envelope and

placing thereon a two cent uncancelled postage stamp, and
16 depositing same in United States mail at Los Angeles, Calif.

DUKE STONE.

Subscribed and sworn to before me this 1st day of May, 1916.

[Notarial Seal.] H. E. WASSELL,
Notary Public in and for the County of Los Angeles, State of California.

Endorsed: Filed May 2, 1916. A. B. Pilch, Clerk. By O. A. Lowentrout, Deputy.

(Title of Court and Cause.)

Judgment.

On May 22nd, 1916, came on to be heard defendant's demurrer to plaintiff's complaint, and plaintiff appeared by Attorney, Henry M. Willis, Esq., and defendant appeared by Duke Stone, Esq., and thereupon after argument of counsel the matter was submitted, and thereafter, on June 9th, 1916, the Court being well and sufficiently advised in the premises finds that the demurrer to plaintiff's complaint is well taken and that the same should be sustained, and it was ordered on said date that the same be sustained, giving the plaintiff ten days' leave to amend, if he so desired; and it appearing to the Court that due notice of sustaining said demurrer was served upon the plaintiff's counsel, and that he has refused to amend
17 said complaint within the time provided by order of the Court, and that he elects to stand upon said complaint.

It is therefore Ordered, Adjudged and Decreed by the Court that the plaintiff take nothing by this suit, and that plaintiff's complaint be dismissed with judgment in favor of the defendant, and for his costs, taxed at $3.00. For which sum let execution issue in favor of the defendant and against the plaintiff.

Dated at Riverside, California, this 24th day of June, 1916.

HUGH H. CRAIG,
Judge.

Endorsed: Filed June 24, 1916. A. B. Pilch, Clerk. By Lyla Palmer, Deputy.

Endorsed: Recorded in Book 20 of Judgments at page 326 the 24th day of June, 1916. A. B. Pilch, Clerk. By Lyla Palmer, Deputy.

(Title of Court and Cause.)

Certificate to Judgment Roll.

STATE OF CALIFORNIA,
County of Riverside, ss:

I, A. B. Pilch, County Clerk of the County of Riverside, State of California, and Ex-Officio Clerk of the Superior Court, in and
18 for said County, do hereby certify the foregoing to be a true copy of the Judgment entered in the above-entitled action, and recorded in Judgment Book 20 of said Court, at page 326. And I further certify that the foregoing papers, hereto annexed, constitute the Judgment Roll in said action.

Witness, my hand and the seal of said Superior Court, this 24th day of June A. D. 1916.

[SEAL.]

A. B. PILCH,
Clerk,
By R. W. RUSSELL,
Deputy.

(Title of Court and Cause.)

Notice of Appeal.

To A. B. Pilch, County Clerk and Ex-Officio Clerk of the Above Entitled Court, and to James M. Ocheltree and Duke Stone, his Attorney:

You will please take notice that the plaintiff hereby appeals to the Supreme Court of the State of California from the judgment entered in the above entitled action on June the twenty-fourth, 1916, and from the whole thereof.

HENRY M. WILLIS,
J. O. PHILLIPS,
Attorneys for Plaintiff.

19 Dated August 18, 1916.

Endorsed: Filed Aug. 23, 1916. A. B. Pilch, Clerk, by E. B. Harris, Deputy.

Minute Order.

Book 33, Page 293, Minutes of Superior Court. Tuesday, June 6, 1916, 10 o'clock A. M.

Present:
Hon. Hugh H. Craig, Judge.
A. B. Pilch, Clerk, by O. A. Lowentrout, Deputy.
F. P. Wilson, Sheriff, by J. F. Reimer, Deputy.

Culpepper vs. Ocheltree.
Demurrer sustained. 10 days to amend.

(Title of Court and Cause.)

Clerk's Certificate.

STATE OF CALIFORNIA,
County of Riverside, ss:

I, A. B. Pilch, County Clerk and Ex-Officio Clerk of the Superior Court in and for said county, hereby certify that I have compared the foregoing transcript with the original papers in the above entitled action now on file in my office, and that the same contains full, true and correct copies of the Judgment Roll, Notice of Appeal from the Judgment, and Minute Order on Demurrer, together with the endorsements on said papers, and documents, as the same appear on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Superior Court this 28 day of Sept., 1916.

A. B. PILCH,
Clerk,
By C. W. JOHN,
Deputy.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of Transcript on Appeal in L. A. 4962, Robert L. Culpepper vs. James M. Ocheltree, as shown by the records in my office.

Witness my hand and the Seal of the Court, this 24th day of February, A. D. 1920.

[Seal Supreme Court of California.]

B. GRANT TAYLOR,
Clerk,
By M. C. VAN ALLEN,
Deputy Clerk, Los Angeles Office.

Endorsed.

Service of the within by copy is hereby admitted this — day of September, 1916.

DUKE STONE,
[SEAL.] *Attorney for Defendant and Respondent.*

Received a copy of the within this 28 day of September, 1916, for the Judge of the Superior Court of Riverside County, State of California, who tried the case.

A. B. PILCH,
Clerk of the said Superior Court.
By C. W. JOHN,
Deputy.

[Seal of Supreme Court of California.]

22 In the Supreme Court of the State of California.

L. A., No. 4962.

ROBERT L. CULPEPPER, Plaintiff and Appellant,

v.

JAMES N. OCHELTREE, Defendant and Respondent.

Stipulation.

Whereas the transcript on appeal in the above entitled action has just been filed with the Clerk of the above entitled Court, and whereas the questions to be determined by the Court upon the appeal in said case, are identical with the questions to be determined by the above entitled Court in the case of John McLaren, plaintiff and appellant vs. L. G. Fleischer, defendant and respondent, being L. A., No. 4736, which said case is now ready to be submitted to the Court for its consideration upon a transcript on appeal and written briefs of both appellant and respondent; and whereas the briefs now on file in said case, L. A., No. 4736, contain a full discussion of all the points of law to be determined upon the appeal in the above entitled case.

Therefore it is stipulated by and between Henry M. Willis and J. O. Phillips, attorneys for plaintiff and appellant herein and Duke Stone, attorney for defendant and respondent herein, that the above entitled cause may be consolidated with the case L. A. 4736 and considered and determined by the Court along with said cause upon the briefs now on file therein, and that no further written briefs need be filed in this above entitled cause.

Dated this 6th day of October, 1916.

HENRY M. WILLIS AND
J. O. PHILLIPS,
Attorneys for Plaintiff and Appellant.
DUKE STONE,
Attorney for Defendant and Respondent.

It is so ordered.

_____,
Chief Justice.

23 By the Court:

It is ordered that the cases hereinafter named be and the same are hereby assigned to Department One and in accord with the stipulations on file that the same be and they hereby are submitted on the briefs on file.

L. A., No. 4962. Culpepper v. Ocheltree.

Dated: January 20, 1919.

Minutes of the Supreme Court in Bank, January 20, 1919.

L. A., 4962.

CULPEPPER

v.

OCHELTREE.

By the Court:

The order heretofore made submitting the above entitled causes is vacated, for the purpose of giving leave to file additional briefs. It is ordered that the appellant in each case be allowed thirty days within which to file briefs in reply to this point. Leonard, Surr & Hellyer are allowed fifteen days from the service of such brief within which to reply to the same and thereupon the causes are to stand submitted.

Minutes of Department One June 17, 1919.

L. A., 4962.

CULPEPPER

v.

OCHELTREE.

By the Court:

All of the briefs having been filed pursuant to previous order cause submitted. Shaw, P. J.

Dated, July 22, 1919.

Minutes of Department One July 22, 1919.

L. A., 4962.

CULPEPPER

v.

OCHELTREE.

By the Court:

Judgment affirmed.

Minutes of Department One December 1, 1919.

L. A., 4962.

CULPEPPER

v.

OCHELTREE.

By the Court:

Rehearing denied December 29, 1919. (All concur.)

Minutes of the Supreme Court in Bank, December 29, 1919.

24 Filed Dec. 1, 1919. B. Grant Taylor, Clerk. By —— Erb, Deputy.

Department One.

L. A., No. 4962.

ROBERT L. CULPEPPER, Plaintiff and Appellant,

vs.

JAMES M. OCHELTREE, Defendant and Respondent.

By the Court:

The appeal herein was taken from a judgment of the Superior Court of Riverside County dismissing plaintiff's complaint after demurrer sustained and plaintiff refused to amend. This case was submitted on the briefs filed in McLaren v. Fleischer, L. A. No. 4736, this day decided. The only difference between the two cases is that the defendant herein received notice on January 13, 1909, that he had been successful in his contest and was awarded a preference right to enter the land within thirty days after it should be restored to entry. The defendant in McLaren v. Fleischer received a similar notice on February 11, 1909,—the former notice coming within the time section 7 of the Rules and Regulations of the Land Department of June 5, 1905, were in force and the latter after section 7 had been superseded by section 6 of the Rules and regulations of January 19, 1909.

25 In view of what we have said in McLaren v. Fleischer this difference in the time of receipt of notice is immaterial and therefore upon the authority of that case the demurrer herein is sustained.

Judgment affirmed.

26 In the Supreme Court of the State of California.

L. A., 4962.

ROBERT L. CULPEPPER, Plaintiff and Appellant,

vs.

JAMES M. OCHELTREE, Defendant and Respondent.

I, B. Grant Taylor, Clerk of the Supreme Court of The State of California, do hereby certify that the preceding and annexed is a true and correct copy of the Minute Orders of the Supreme Court in Bank and in Department One, made and entered on the dates therein specified; and a copy of the Opinion of Department One of

said Court; and a Stipulation consolidating above entitled cause with L. A. 4736—McLaren v. Fleischer.

And I further certify that the remittitur in the above entitled cause was issued and sent to the County Clerk of Riverside County, California, on January 2, 1920, as shown by the records of my office.

Witness my hand and the seal of the Court, this 2nd day of April, 1920.

[Seal of Supreme Court of California.]

B. GRANT TAYLOR,
Clerk.
By M. C. VAN ALLEN,
Deputy Clerk, Los Angeles Office.

27 In the Supreme Court of the State of California.

L. A. 4962.

ROBERT L. CULPEPPER, Plaintiff and Appellant,

vs.

JAMES M. OCHELTREE, Defendant and Respondent.

Stipulation on Return to Writ of Certiorari.

Whereas, the Supreme Court of the United States did, on the 6th day of May, 1920, duly issue over the hand of the Clerk, and under the seal of said Court, a Writ of Certiorari in the above entitled action, and directed to the Honorable Judges of the Supreme Court of the State of California, and commanding them to send without delay, to the said Supreme Court of the United States, the record and proceedings in said cause, and

Whereas, the duly certified copies of the said record and proceedings have been heretofore filed in the office of the Clerk of said Supreme Court of the United States, and have been printed as certified, and the printed copies filed as required by the rules of said Court; and

Whereas, the written decision of the Supreme Court of California in said cause, has been printed and filed with the petition for said writ in the office of the Clerk of said United States Supreme Court.

It is therefore stipulated by and between the Appellant and the Respondent herein, through their respective counsel, that the certified transcript of the record and proceedings, and the said decision as printed in said petition heretofore filed, and now on file in the office of the Clerk of the Supreme Court of the United States may be taken and considered as the return to the said Writ of
28 Certiorari, and that a copy of this stipulation, duly certified by the Clerk of the Supreme Court of California, may be

transmitted and taken as the return of said Judges of the Supreme Court of California to said Writ.

Dated May 14, 1920.

HENRY M. WILLIS AND
J. O. PHILLIPS,
SAMUEL HERRICK,
Of Counsel,
Attorneys for Appellant.
DUKE STONE,
Attorney for Respondent.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify in obedience to the writ of certiorari hereto attached and returned herewith, the foregoing to be a true and correct copy of the stipulation of counsel filed in said cause on the 14th day of May, 1920 as shown by the records of my office.

Witness my hand and the Seal of the Court, this 9th day of June, A. D. 1920.

[Seal of Supreme Court of California.]

B. GRANT TAYLOR,
Clerk, San Francisco Office.

29 [Endorsed:] No. L. A. 4962. In the Supreme Court of the State of California. Robert L. Culpepper, Appellant, vs. James M. Ocheltree, Respondent. Stipulation on Return to Writ of Certiorari. Filed May 14, 1920. B. Grant Taylor, Clerk, by —— ——, Deputy.

30 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Being informed that there is now pending before you a suit in which Robert L. Culpeper is appellant, and James M. Ocheltree is respondent, L. A. No. 4962 which suit was removed into the said Supreme Court by virtue of an appeal from the Superior Court of Riverside County, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, Do hereby command you that
31 you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the sixth day of May, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] Original. L. A. 4962. File No. 27,587. Supreme Court of the United States, No. 832, October Term, 1919. Robert L. Culpepper vs. James M. Ocheltree. Writ of Certiorari. Filed May 14, 1920. B. Grant Taylor, Clerk. By Wm. J. Traeger, Deputy.

[Endorsed:] File No. 27,587. Supreme Court U. S., October Term, 1920. Term No. 832. Robert L. Culpeper, Petitioner, vs. James M. Ocheltree. Writ of Certiorari and return. Filed June 15, 1920.